

**OPINION  
75-176**

December 8, 1975            (OPINION)

Mr. E. A. Noble

State Geologist

University Station

Grand Forks, ND 58202

Dear Mr. Noble:

This is in reply to your letter of December 1, 1975, in which you state the following facts and questions:

"This office respectfully requests your opinion as to the application of the provisions of Section 38-08-09.9 of the North Dakota Century Code (Enlargement of Area - Creation of new units - Amendments of plan).

To add to a unit any parcels or areas not included in the original plan, is ratification by 100 percent of the working and royalty interest owners required, or will ratification by 80 percent of each class suffice?"

Section 38-08-09.9 of the N.D.C.C. provides as follows:

"ENLARGEMENT OF AREA - CREATION OF NEW UNITS - AMENDMENTS OF PLAN. The unit area of a unit may be enlarged at any time by the commission, subject to the limitations hereinbefore provided to include adjoining portions of the same unit source of supply, including the unit area of another unit, and a new unit created for the unitized management, operation, and further development of such enlarged unit area, or the plan of unitization may be otherwise amended, all in the same manner, upon the same conditions and subject to the same limitations as provided with respect to the creation of a unit in the first instance, except, that where an amendment to a plan of unitization relates only to the rights and obligations as between lessees the requirement that same be signed, ratified, or approved by royalty owners of record of not less than eighty percent of the unit area shall have no application."

Insofar as your particular question is concerned, section 38-08-09.5 of the N.D.C.C. provides in part, with respect to the formation of original statutory units:

"No order of the commission creating a unit and prescribing the plan of unitization applicable thereto shall become effective unless and until the plan of unitization has been signed, or in writing ratified or approved by those persons who, under the commission's order, will be required to pay at least eighty percent of the costs of the unit production and also by the owners of at least eighty percent of the production or proceeds

thereof that will be credited to interests which are free of cost such as royalties, overriding royalties, and production payments, and in addition it shall be required that when there is more than one person who will be obligated to pay costs of the unit operation, at least two nonaffiliated such persons and at least two of the persons owning production or proceeds thereof that will be credited to interests which are free of costs such as royalties, overriding royalties, and production payments, shall be required as voluntary parties, and the commission has made a finding either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area."

It is apparent from these provisions that parcels or areas not included in the original plan of statutory unitization may be included therein by ratification of 80 percent of the working and royalty interest owners and that 100 percent ratification by such interests is not required under the provisions of section 38-08-09.9 of the N.D.C.C. The authority to add parcels of land to the statutory unit is given the commission by statute and is not affected by agreements to the contrary between the interest owners.

Sincerely yours,

ALLEN I. OLSON

Attorney General